

ORIGINAL

Before the

FEDERAL COMMUNICATIONS COMMISSION RECEIVED

Washington, D.C. 20554

JAN 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(North Canaan and)
Sharon, Connecticut, and)
Rosendale, New York))
)
)
)

MM Docket No.
RM-

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

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REPLY COMMENTS

Sacred Heart University, Inc ("SHU"), buy its counsel, hereby replies to the "Comments on Petition for Rule Making" filed on December 13, 1995, by State University of New York ("SUNY").^{1/} As SHU will demonstrate, its decision to file a new petition to allot Channel 277A to North Canaan, Connecticut, with channel substitutions at Sharon, Connecticut, and Rosendale, New York, was the proper course to take rather than the filing of a petition for reconsideration to the Report and

^{1/} Due to the FCC's shutdown since December 16, 1995, SHU is submitting this reply in accordance with the Public Notice of January 11, 1996 (DA 96-2), providing an additional period until January 16, 1996, to file documents which were due during the shutdown.

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Order in MM Docket 93-17, released October 27, 1995 (DA 95-2129). In support hereof, SHU states as follows:

1. On December 1, 1995, SHU submitted a petition for rule making seeking the allotment of Channel 277A to North Canaan, Connecticut, and its reservation for noncommercial educational use as a first local service. To accomplish this allotment, it is necessary to substitute Channel 273A for Channel 277A at Sharon, Connecticut, with a modification of Station WQQQ's license and the substitution of Channel 255A for vacant channel 273A at Rosendale, New York.^{2/} SHU stated that it would reimburse Station WQQQ for the reasonable costs of its frequency change.

2. In support of this proposal, SHU stated that (1) North Canaan (population 3,284) would receive a first local service; (2) a significant portion of the surrounding area would receive a first (white) and second (grey) noncommercial educational service to 17,787 persons and 11,865 persons, respectively; (3) WQQQ could increase its Class A facility to 6 kW on the new channel; and (4) SHU could bring its classical music and

^{2/} The window period for Channel 273A at Rosendale closed on January 4, 1996. The FCC has not yet issued a Public Notice announcing which applications were filed. SHU did file its application for this channel on January 11, 1996, due to the FCC's shutdown since December 16, 1995. Unlike commercial applicants who were able to file in Pittsburgh with a filing fee payment, SHU was forced to wait until the FCC reopened on January 11, 1996, to file its application in Washington for noncommercial educational use of the channel.

National Public Radio news programming to North Canaan and northwest Connecticut where there has been much demand for this type of programming.

3. SUNY argues that SHU's petition amounts to nothing more than a petition for reconsideration of MM Docket 93-17 wherein Channel 273A was allotted to Rosendale. SUNY states that it intends to file an application for Channel 273A at Rosendale. As an applicant, SUNY favors Channel 273A over Channel 255A at Rosendale because Channel 255A "would not permit its Station WFNP at Rosendale to provide noncommercial educational programming service as effectively as the requested (and allotted) Channel 273A...." and "would result in diminished service to WFNP's audience." Comments at p. 2.

4. Contrary to SUNY's contentions, SHU filed a new petition rather than seek reconsideration of MM Docket 93-17 for three valid and legitimate reasons. First, SHU does not dispute the action taken by the Commission in dismissing the SHU/Radio South Burlington ("RSB") counterproposal due to the lack of mutual exclusivity between the proposed and existing channels for Station WQQQ, Sharon, Connecticut.

5. Second, circumstances have changed since RSB requested a change in community of license and channel of operation in April, 1993, nearly three years ago. At that time, RSB had not yet commenced operations on Station WQQQ. RSB's interest in the

proposal was predicated on constructing a 6 kW facility to serve Washington, New York. However, when it became apparent that the Commission had decided not to accept the Washington proposal, RSB decided to construct its 3 kW Sharon facility rather than await a decision. When that decision was finally rendered in October, 1995, RSB was no longer interested in moving its station to Washington, New York. Over the past couple of years, Station WQQQ has developed a relationship with the residents of Sharon and engendered considerable goodwill. By the same token, SHU's purpose in proposing a Sharon station was its commitment to provide programming to the residents of Sharon when Station WQQQ moved to Washington. But now that WQQQ is providing service to the residents of Sharon, RSB is not interested in disrupting its existing service.

6. Third, SHU's desire to provide a noncommercial educational classical programming service to North Canaan in particular and northwest Connecticut in general was predicated upon the interest shown by residents and visitors of this area to the cultural and fine arts activities that occur in this region. Every summer, there are music fairs that specialize in classical music. Based on the strong interest shown for such cultural activities and the response SHU has received for its proposal, this area centered around North Canaan is very attractive for a classical station.

7. Contrary to SUNY's protestations, SHU has no hidden agenda. As a noncommercial educational licensee, it only wants to bring classical and National Public Radio news to the people who have shown an interest in this type of programming. That is exactly what the Commission has in mind under its Section 307(b) mandate to provide service where there is a demand therefor.

8. That is not the case with SUNY. SUNY's motives in opposing SHU's proposal is driven by its own private goals. It wants to retain its current site which only works on Channel 273A and to have an unreserved commercial channel that will bring it a future profit. As SHU has shown in separate filings in MM Docket 93-17, SUNY could have justified a noncommercial educational reservation on Channel 273A or Channel 255A at Rosendale and become eligible for a modification of license. But SUNY has insisted on having a commercial channel. As one of many possible applicants for Channel 273A at Rosendale, SUNY's own interest in: (1) retaining its current site (which has been shown in MM Docket 93-17 as failing to provide a city grade signal to all of Rosendale); and (2) insisting that the channel be commercial for its own profit motive, is grossly inadequate when compared to the public interest benefits offered by SHU's North Canaan proposal, including first local service, first and second noncommercial educational service, responsive programming to the residents of this area, and a 6 kW increase for Station WQQQ.

9. As demonstrated in the attached Engineering Statement, Channel 255A has a large site area available for applicants. There is also a large common site area for Channel 273A applicants to change to Channel 255A under Section 73.215 of the Commission's Rules. For example, SHU has filed an application for Channel 273A at Rosendale. SHU's proposed transmitter site is an existing tower which can be used for Channel 255A (under Section 73.215 of the Commission's Rules) should the Commission decide to change the Rosendale channel. See Engineering Statement. Thus, SUNY's site preference, i.e., its existing site which does not reach all of Rosendale with a 70 dBu signal should not be given any weight in the Commission's evaluation of SHU's proposal to substitute Channel 255A for Channel 273A, particularly where there are sites such as SHU's proposed site which can be used on either channel.^{3/}

CONCLUSION

10. Contrary to SUNY's characterizations, SHU did not miss a petition for reconsideration deadline nor is it trying to accomplish the same thing that it failed to achieve in MM Docket 93-17. In the nearly three years since it filed its counterproposal jointly with RSB, circumstances have changed. RSB has constructed its facility to serve Sharon. It has

^{3/} Although SUNY stated that Channel 255A "would not be as effective" and "provide diminished service to its audience," SUNY has not demonstrated how Channel 273A is preferable in terms of service to the public.

developed an audience and created goodwill with the residents. It no longer desires to leave Sharon.

11. SHU has a serious and well founded interest in providing service to North Canaan and its surrounding area. SHU is no longer bound to replace a service which was to be vacated at Sharon.


12. SUNY's objection is premised upon its own private interest of saving money on the one hand by retaining its current site which fails to reach all of Rosendale and, on the other hand, to have the opportunity to make a future profit on a commercial channel when it could have justified a noncommercial educational reservation on the commercial channel.

13. SHU has also shown that by substituting Channel 255A at Rosendale, SHU's proposed site, an existing tower, is available for use as well as a large area which can be used without short spacing under Section 73.207 or with short spacing under Section 73.215.

14. For these reasons, SHU urges the Commission to propose the allotment of Channel 277A to North Canaan, Connecticut, substitute Channel 273A for Channel 277A at Sharon, Connecticut, and substitute Channel 255A for Channel 273A at Rosendale, New York.

Respectfully submitted,

SACRED HEART UNIVERSITY, INC.

By: 
Mark N. Lipp

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Its Counsel

January 11, 1996

ENGINEERING STATEMENT IN RESPONSE TO

**"Comments on Petition for Rule Making"
filed by State University of New York**

**AMENDMENT OF SECTION 73.202(b)
TABLE OF ALLOTMENTS**

SACRED HEART UNIVERSITY

**NORTH CANAAN AND SHARON, CONNECTICUT
AND ROSENDALE, NEW YORK**

JANUARY 1996

ENGINEERING STATEMENT IN RESPONSE TO

**"Comments on Petition for Rule Making"
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**AMENDMENT TO SECTION 73.202(b)
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SACRED HEART UNIVERSITY

**NORTH CANAAN AND SHARON, CONNECTICUT
AND ROSENDALE, NEW YORK**

JANUARY 1996

SUMMARY

The following engineering statement has been prepared on behalf of **Sacred Heart University, Inc.** ("SHU"). SHU has authorized the following engineering statement for the purpose of clarifying the public interest benefits associated with its petition for Rule Making filed with the Commission on December 1, 1995. This petition proposed to add Channel 277A at North Canaan, Connecticut, delete Channel 277A at Sharon, Connecticut and substitute Channel 273A in its place, and delete Channel 273A at Rosendale, New York and substitute Channel 255A in its place. On December 13, 1995 the State University of New York ("SUNY") filed comments on the SHU petition. This statement also responds to some of the statements made by SUNY in its comments.

CHANNEL 255A AND 273A SITE AREAS FOR ROSENDALE, NEW YORK

SUNY has stated that it prefers Channel 273A to Channel 255A as it would provide diminished service to its existing audience. This statement is presumably based on SUNY's desire to continue to use its current site, a site that is short spaced under Section 73.207 on Channel 273A. SHU demonstrated in its January 11, 1996 Opposition to SUNY's Petition For Reconsideration in MM Docket No. 93-17 that the current WFNP site is capable of serving 63.9% of the population within the city of Rosendale, New York. To comply with the Commission's Rules, Section 73.315, SUNY must seek an alternate site.

Figure 1, attached, is a 1:500,000 scale map on which has been plotted the site areas for Channel 255A and Channel 273A based on Section 73.207 distance separation standards. The Rosendale U.S. Atlas reference coordinates are shown for reference purposes. It is clear from this exhibit that both channels have large site areas. However, this map does not demonstrate the full extent of the available site area. As an example, on January 11, 1996 SHU filed an FCC Form 340 application for construction permit for Channel 273A specifying the site of FM station WBPM, Channel 232A, Kingston, New York. This site is short spaced under Section 73.207 yet meets all section 73.215 processing standards for full 6 kW equivalent operation. In a similar fashion, the WBPM site is short spaced under Section 73.207 standards on Channel 255A yet also may be specified under Section 73.215 of the Commission's Rules.

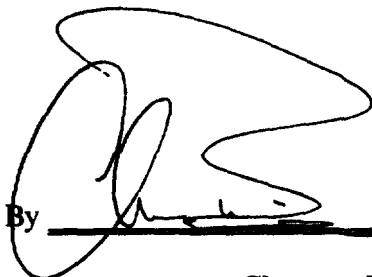
Figure 2 is a depiction of the practical site area for Channels 255A and 273A when Section 73.215 processing and Section 73.315 city grade service requirements are considered. It is noted that the city grade requirement is based on a conservative 70 dBu radius of 11 kilometers where exact 70 dBu distance would vary depending on intervening terrain and site location. It is noted that Channel 255A and 273A enjoy a sizable common site area which can be specified under Section 73.215 of the Commission's Rules.

OTHER STATIONS

There are additional public interest benefits associated with the SHU petition concerning existing stations which are described as follows. First, WQQQ, Channel 277A in Sharon, Connecticut is not operating at full facilities due to a short spacing to WGNY, Channel 276A, Newburgh, New York. Moving WQQQ to Channel 273A would allow that station to obtain full 6 kW equivalent facilities thereby effecting a more efficient utilization of the spectrum and allowing the station to serve additional people. Second, with WQQQ operating on Channel 273A, WGNY would be freed from its short spacing restriction to WQQQ and would be able to pursue full 6 kW facilities, with greater flexibility, at its current site under Section 73.215 of the Commission's Rules with respect to the remaining short spacings to WDRC, Channel 275B, Hartford, Connecticut and to WBZO, Channel 276A, Bay Shore, New York.

CONCLUSION

The foregoing was prepared on behalf of **Sacred Heart University, Inc.** by Clarence M. Beverage of *Communications Technologies, Inc.*, Marlton, New Jersey, whose qualifications are a matter of record with the Federal Communications Commission. The statements herein are true and correct of his own knowledge, except such statements made on information and belief, and as to these statements he believes them to be true and correct.

By  _____

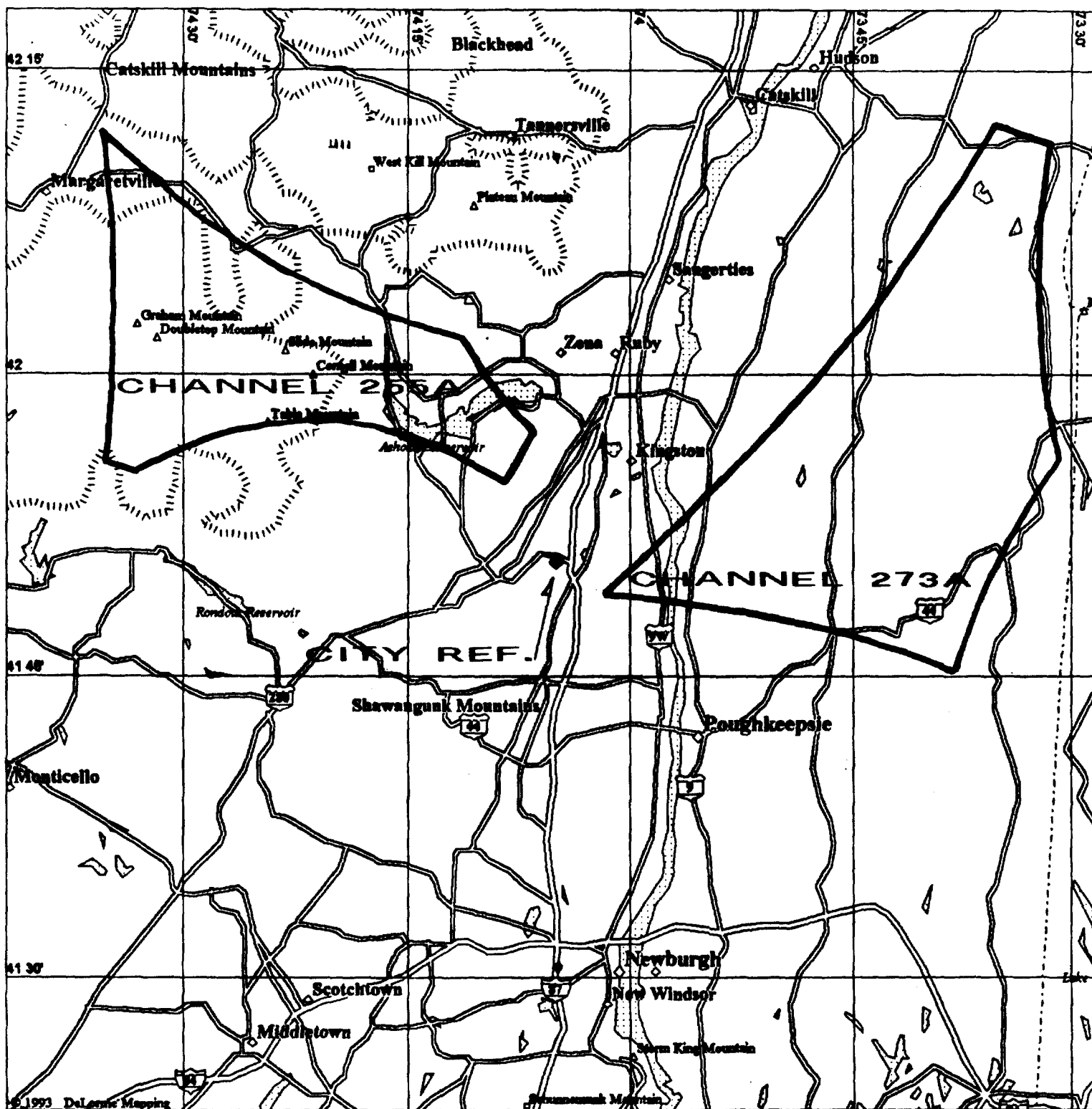
Clarence M. Beverage
for Communications Technologies, Inc.
Marlton, New Jersey

SUBSCRIBED AND SWORN TO before me,

this 12th day of January, 1996,

Esther G. Sperbeck, NOTARY PUBLIC

ESTHER G. SPERBECK
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES OCT 15, 1997



LEGEND

- Population Center
- Geo Feature
- ◇ Town, Small City
- ◇ Large City
- △ Hill
- Interstate, Turnpike
- US Highway
- State/Prov Boundary
- Major Street/Road

- US Highway
- Open Water
- Contour

Scale 1:500,000 (at center)

10 Miles

10 KM

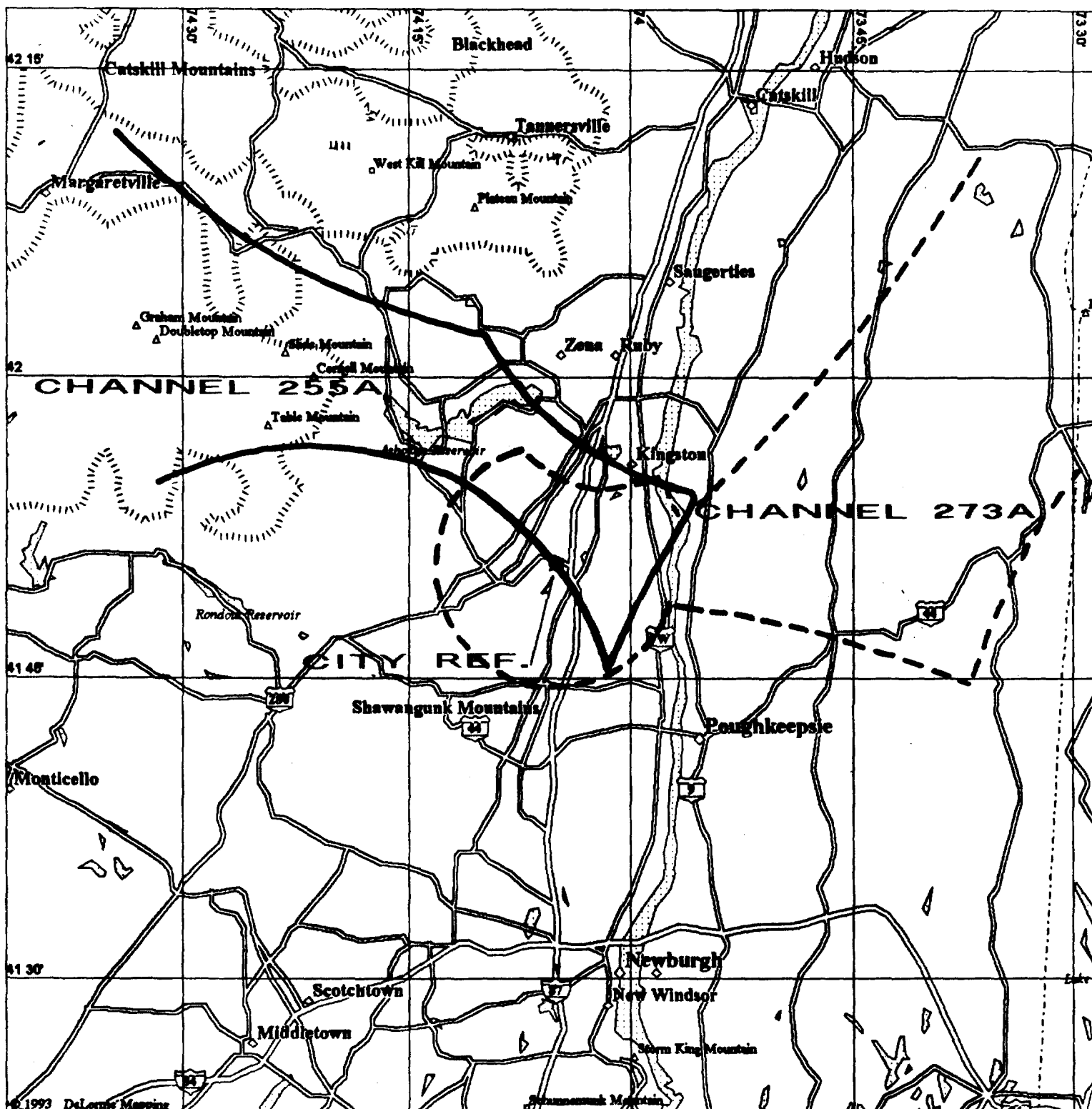
FIGURE 1

SITE AREA MAP - ROSENDALE, NEW YORK

SACRED HEART UNIVERSITY
ROSENDALE, NEW YORK

SHOWING CHANNEL 255A & 273A
SITE AREAS BASED ON SECTION
73.207 DISTANCE SEPARATION STANDARDS

Communications Technologies, Inc.
Marlton, New Jersey
January 1996



LEGEND

- Population Center
- Geo Feature
- ◇ Town, Small City
- ◇ Large City
- △ Hill
- Interstate, Turnpike
- US Highway
- State/Prov Boundary
- Major Street/Road

- US Highway
- Open Water
- Contour

Scale 1:500,000 (at center)

10 Miles
10 KM

FIGURE 2

SITE AREA MAP - ROSENDALE, NEW YORK

SACRED HEART UNIVERSITY
ROSENDALE, NEW YORK

SHOWING THE PRACTICAL CHANNEL 255A
SITE AREA - SOLID LINE AND
CHANNEL 273A SITE AREA - DASHED LINE
BASED ON SECTION 73.215 AND
SECTION 73.315 (SEE ENGINEERING STATEMENT)

Communications Technologies, Inc.
Marlton, New Jersey
January 1996

CERTIFICATE OF SERVICE

I, Veronica Abarre, a secretary in the law firm of Mullin, Rhyne, Emmons and Topel, P.C., hereby certify that I have, on this 16th day of January, 1996, sent by first-class U.S. Mail, postage prepaid, copies of the foregoing "REPLY COMMENTS" to the following:

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